

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
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SACRAMENTO, CA 95814

AMENDMENT TO TITLE 1, CALIFORNIA CODE OF REGULATION
REGARDING ENFORCEMENT OF SECTION 11340.5 OF THE GOVERNMENT
CODE

MODIFIED TEXT

OAL has illustrated changes to the originally proposed text in the following manner: text originally proposed to be added to the California Code of Regulations is displayed in *italic* type; additions to the language originally proposed are bold *italic*; text originally proposed to be deleted is displayed in ~~strikeout~~ type and deletions from the language originally proposed are shown in double ~~strikeout~~.

Chapter 2. Underground Regulations

Section 270. OAL Review of Petitions Regarding Underground Regulations

(a) Upon receipt of a petition ~~complying with~~ *submitted pursuant to* this Chapter ~~chapter~~ from an interested person, ~~OAL may issue a determination in accordance with this chapter to respond to the petition.~~

(1) If the petition is incomplete, OAL will notify the petitioner in writing which items are missing from the petition, and that the deficiencies must be cured within 60 days of the date of the notice. ~~OAL will notify the petitioner in writing what required items are missing from the petition.~~ OAL will decline to consider the petition if the required items are not received within 60 days of the date of the notice. OAL will begin the review period required in subsection (b) when the petition is complete.

(2) If the petition is complete, OAL will either accept or decline to consider the petition pursuant to subsection (b).

(b) No later than ~~30~~ 60 days after receipt of a complete petition filed pursuant to this chapter, the office shall determine whether or not to consider the petition on its merits, in its entirety or in part, unless, prior to the end of the ~~30-day~~ 60-day period, the agency submits to OAL a certification pursuant to section 280. OAL may consult with the petitioner and the agency to obtain additional information for its use in determining whether or not to consider the petition on its merits.

(c) The decision to consider or to decline to consider a petition shall be at the exclusive discretion of OAL. Factors considered in deciding whether or not to accept a petition shall include, but are not necessarily limited to:

(1) The degree to which the petition raises an issue of considerable public importance requiring prompt resolution.

(2) Additional relevant information, if any, obtained pursuant to subsection (b).

(3) Availability of OAL personnel to complete the review of the petition pursuant to the time limits established by this chapter.

(d) If OAL declines to consider the petition, it shall immediately advise the petitioner and the agency of the decision and specifically indicate that the decision in no way reflects on the merits of the underlying issue presented by the petition.

(e) If OAL decides to consider the petition on its merits, it shall *either issue a summary disposition letter pursuant to subsection (f) or issue a determination pursuant to subsections (g) through (k) this section.* ~~notify the petitioner and the agency of this decision and shall publish the petition or a summary of the petition in the next California Regulatory Notice Register, giving notice to the public that comments on issues raised by the petition may be submitted to OAL. Any person submitting comments to OAL shall simultaneously provide a copy of the comments to the agency and the petitioner.~~

(f) (1) *If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate ~~clearly~~ to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.*

(2) *Circumstances in which facts ~~clearly~~ demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:*

(A) *The challenged rule has been superseded.*

(B) *The challenged rule is contained in a California statute.*

(C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*

(D) *The challenged rule has expired by its own terms.*

(E) *An express statutory exemption from the rulemaking provisions of the APA is ~~clearly~~ applicable to the challenged rule.*

(3) *A summary disposition letter shall state the basis for concluding that the challenged rule is not an underground regulation and shall specify that the issuance of the letter does not restrict the petitioner's right to adjudicate the alleged violation of section 11340.5 of the Government Code.*

(4) *A summary disposition letter shall be sent to the petitioner not later than 60 days following receipt of the **complete** petition.*

(g) *If OAL elects to issue a determination, it shall notify the petitioner and the agency ~~of this decision~~ and shall publish the petition or a summary of the petition in the next California Regulatory Notice Register, giving notice to the public that comments on issues raised by the petition may be submitted to OAL. **Comments from the public must be submitted to OAL no later than 30 days from the date of publication.** Any person submitting comments to OAL shall: ~~OAL may disregard public comments received more than 45 days following publication of the petition.~~*

(1) simultaneously provide a copy of the comments to the agency and the petitioner.

(2) certify to OAL that copies were provided to the agency and petitioner.

~~(f)~~ (h) The agency may submit a response to the petition to OAL. No response may be considered by OAL unless the agency has provided a copy of the response to the petitioner simultaneously with submission of the response to OAL. Any response by the agency shall be submitted to OAL within ~~30~~ 45 calendar days of the publication of the petition in the California Regulatory Notice Register. ***OAL may extend the time for an agency to file a response to a petition if the agency is a "state body" as defined in Section 11121 of the Government Code and the agency's response requires action taken at a meeting subject to the Bagley-Keene Open Meeting Act (commencing with Section 11120 of the Government Code), except that no extension pursuant to this subsection may be granted if it would prevent OAL's compliance with subsection (h) (j).***

~~(g)~~ (i) The petitioner may submit to OAL a reply to the agency's response not later than 15 calendar days after the agency response was provided to the petitioner pursuant to subsection ~~(f)~~ (h).

~~(h)~~ (j) After the time for the petitioner to submit a reply to the agency's response, and no later than ~~150~~ 120 ***(or 150 days if the agency has received an extension pursuant to subsection (h))*** days after publication of the accepted petition in the California Regulatory Notice Register, OAL shall issue a determination as to whether or not the agency has issued, used, enforced, or attempted to enforce an underground regulation.

~~(i) (k) Notwithstanding subsection (f) (h), OAL may extend the time for an agency to file a response to a petition if the agency is a "state body" as defined in Section 11121 of the Government Code and the agency's response requires action taken at a meeting subject to the Bagley-Keene Open Meeting Act (commencing with Section 11120 of the Government Code), except that no extension pursuant to this subsection may be granted if it would prevent OAL's compliance with subsection (h) (j).~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5, Government Code.